



# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 02-043

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. Section 635.12, Stats., requires every small employer insurer to publish its current new business premium rates in the manner and according to categories required by administrative rule promulgated by the Commissioner of Insurance (Commissioner). “New business premium rates” means the premium rate charged or offered to small employers with similar case characteristics in the same class of business for newly issued health insurance with the same or similar benefit design characteristics. [s. 635.02 (5), Stats.]

It appears that a small employer insurer may offer more than one health benefit plan. However, s. Ins 8.52 (4) (a) (intro.) requires a small employer insurer to file only its lowest available new business rates. The statutes appear to require that a small employer insurer publish all of its new business premium rates, rather than only its lowest rates.

Also, s. 635.12, Stats., requires that the small employer insurer publish the new business premium rates. In contrast, the rule proposes that the Commissioner will publish all of the information submitted in a manner that will assist small employers to readily compare the rates. The analysis does not indicate how the Commissioner intends to publish this information. Is information available about this?

b. Section Ins 8.52 (4) (a) 4. indicates that the Commissioner may specify additional features to be included in the report as appropriate to implement “this section.” Section Ins 8.52 relates to regulation of rates and rate changes in general. It appears that the intention was to

indicate that the Commissioner may specify additional features to be included in the report as appropriate to implement only s. Ins 8.52 (4), rather than all of s. Ins 8.52. If so, the correct reference would be to “this subsection.”

However, the larger problem with s. Ins 8.52 (4) (a) 4. is that an administrative rule should not be used to bootstrap additional requirements that are not included in the rule by simply indicating that an agency may later develop policies. Any later developed policies are subject to the rule-making process. [See generally ss. 227.01 (13) and 227.10 (1), Stats.] How does the Commissioner intend to specify the additional features?

## **2. Form, Style and Placement in Administrative Code**

a. Section Ins 8.52 (4) (intro.) indicates that the filing must be on a form provided by the Commissioner. A reference to the form and how to obtain a copy of the form at no charge (or on the Internet, if available) should be included in a Note. [See s. 1.09 (2), Manual.] Also, the form should either be attached to the rule or a statement should be included indicating where a copy of the form may be obtained. As the form was not submitted to the Rules Clearinghouse, this report does not include comments on the content of the form.

b. In s. Ins 8.52 (4) (b), “this rule” should be changed to “this subsection.” [See s. 1.07 (1) (a), Manual.]

c. The effective date of the rule should not pre-date the effective date of the underlying statute.

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the first sentence of s. Ins 8.52 (4) (a) (intro.), it would be helpful if the introductory phrase “On or before December 1” were followed by a comma. It also would be helpful to set off the introductory phrases in s. Ins 8.52 (4) (a) 1., 2., and 3. with a comma.

b. In the first sentence of s. 8.52 (4) (a) (intro.), “new business rates” should be changed to “new business premium rates” to be consistent with ss. 635.02 (5) and 635.12, Stats.

c. In s. Ins 8.52 (4) (a) 1., the hyphen in “co-insurance” should be deleted in order to make the word consistent with other provisions in ch. Ins 8, e.g., s. Ins 8.77. Also, “80/20” should be changed to clarify that this is a percentage. For example, changing it to “80% coinsurance” would make it consistent with other references to coinsurance in ch. Ins 8.

Also, is the reference to 80/20 coinsurance accurate? Should it be 80% of a certain amount of charges and then a different coinsurance rate after a certain amount has been paid, for example, see s. Ins 8.77 (3) (a) 1. and 2.?

d. Section Ins 8.52 (4) (a) 1. and 2. refer respectively to an indemnity plan and defined network plan. Does this constitute the universe of small employer health insurers subject to s. 635.12, Stats.? If not, what provisions apply to other plans?

e. Section Ins 8.52 (4) (a) 3. requires that the rates be specified for family and single plans by age and by geographical location of the small employer insurer. However, it is noted that s. 635.02 (2), Stats., also includes sex and occupation as characteristics that may be used to determine premium rates for a small employer. Was the omission of sex and occupation intentional?

Also, the reference to geographical location of the small employer insurer is confusing in that it suggests that it is the location of the insurer at issue, rather than the geographic location used by the insurer to determine premium rates. [See s. 635.02 (2) and (3j), Stats.] It appears that it would be more accurate to change “by geographical location of the small employer insurer” to “geographic location used by the small employer insurer.”

f. Section Ins 8.52 (4) (a) 4. refers to additional features to be included in the “report.” It appears that the reference should be to the form, rather than to a report. (However, see, 1. b., above.)

g. The proposed order states that it was signed on April 4, 2000. It appears that this date should be April 4, 2002.